

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Abraham I. Zeigler et al. Art Unit : 3691
Serial No. : 09/401,875 Examiner : Campen, Kelly Scaggs
Filed : September 23, 1999 Conf. No. : 5266
Title : MONTAGE FOR AUTOMATED MARKET SYSTEM

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Pursuant to 37 C.F.R. §41.41, Applicant responds to the Examiner's Answer as follows

35 U.S.C. 112, second paragraph rejection

The examiner correctly notes that a typographic error appears on page 14 of Appellant's Appeal Brief. The heading should refer to 35 U.S.C. 112, second paragraph not 35 U.S.C. 112, first paragraph. A replacement sheet for page 14 accompanies this Reply.

Otherwise the examiner did not offer any rebuttal to Appellant's argument in the Appeal Brief against the 35 U.S.C. 112, second paragraph rejection.

Prior Art Rejections

Aggregate quotes having a size

Regarding claim 1, the examiner disagrees with Appellant's contention that Guttermann neither describes nor suggests: "aggregate quotes being quotes that are displayable on displays of client systems, as trading interest in a security, but not being attributable to any market participant." The examiner argues that: "While the appellant may be using the specific term 'quote' and 'aggregate quotes' these terms are within the scope of the terms used in Guttermann et al. for describing the same as stock options, trading and futures contract trading."

The examiner goes on a lengthy discussion of how Guttermann et al. discloses, "aggregate quotes of a size (as trading prices and futures prices)." However, that explanation is irrelevant to the features of: "aggregate quotes ... that are displayable as trading interest in a security, but not being attributable to any market participant," as called for by claim 1.

In Guttermann, all quotes are attributable,¹ meaning that the existence and indeed the entity that posts the quote are known to the market. By contrast, in claim 1 the "aggregate quote" is displayable, e.g., in the portion 72 of the window 70 so that the market can see the effect the quote has on the total size displayed to the market, but is not attributable, e.g., not displayed in the portion 74 of the window 70, and thus meaning that the market does not know what entity the aggregate quote belongs to or even that a quote of that size exists in the market.

The examiner also argues that "quotes" as previously explained by the examiner "are within the scope of appellant's use of the term 'quotes.'"² Appellant disagrees. Appellant had asked the examiner to point out where Guttermann disclosed the particular novel features of the "aggregate quote." Apparently the examiner cannot find those features in Guttermann. The examiner cannot find³ that type of quote in Barron's Business and Financial "Dictionary of Business Terms."⁴

Second, different type of order

The examiner presents an argument regarding "a second, different type of order." Specifically, that is not a term used in Appellant's claims. Rather, that was a term used by Appellant in argument⁵ to point out that Guttermann did not describe a feature of claim 2. The examiner incorrectly responded to that argument by reasoning that: "Guttermann et al. clearly describes receiving more than one order (see pages 4 and 14)." However, what Appellant had argued was that: "Guttermann does not describe receiving a second, different type of order/quote.

¹ See Guttermann Figs. 2a, 2b, 2d, Col. 10, line 44.

² The examiner also argues that:

Moreover, in Barron's Business and Financial guides entitled "Dictionary of Business Terms" and "Dictionary of Finance and Investment Terms" appellants term 'quote' cannot be found, only the use of futures options, exchanges and markets, but no use of the term 'quote' as provided by the appellant.

Appellant has not asked the examiner to provide any special meaning to the term "quote" other than that which is generally known by the Nasdaq Stock Market for instance, or other market venues where market makers are required to post two sided quotes, i.e., for buying "bid" and selling or "offer" quotes.

³ The feature of "aggregate quotes ... that are displayable as trading interest in a security, but not being attributable to any market participant," apparently is not in the dictionary because that type of quote did not exist prior to Appellants use of the quote and thus, may explain why the examiner cannot find that type of quote in Barron's Business and Financial "Dictionary of Business Terms."

⁴ The examiner did not furnish Appellant with a copy of the definition he relies on.

⁵ Appellant's brief page 17.

Thus, Guttermann does not teach the combination of receiving displayable non-attributable quotes and receiving displayable, attributable quotes.”⁶

Appellant maintains that Guttermann’s teaching of receiving “more than one order” as argued by the examiner does not describe or suggest: “receiving displayable non-attributable quotes and receiving displayable, attributable quotes,” as called for in claims. Displayable non-attributable quotes and displayable, attributable quotes are different types of quotes. Guttermann neither describes quotes nor different types of quotes. Indeed, Guttermann does not even disclose different types of orders. However, in any event, whether Guttermann is construed to teach different types of orders (and hence quotes) because Guttermann has more than one order or has orders that are buy orders and other orders that are sell orders, it is plainly evident that Guttermann neither describes nor suggests displayable non-attributable quotes and displayable, attributable quotes, as called for in claim 2.

Neither displayable quotes nor attributable

The examiner argued: “With regards to appellant’s argument that Guttermann does not describe quotes that are ‘neither displayable quotes nor attributable’, Examiner disagrees.”

Appellant argued with respect to Appellant’s claim 3 that Guttermann neither described nor suggested: “receiving quotes that are reserve quotes, which are neither displayable quotes nor attributable to market participants, but are available as trading liquidity in the security.” The examiner did not offer any rebuttal to Appellant’s argument in the Appeal Brief.

Determining total aggregate quote size

In response to Appellant’s argument that Guttermann et al. does not disclose ‘determining total aggregate quote size,’ the examiner refers the Board to the rejection of claims 4-9 without rebutting any argument made by Appellant.

Appellant contends that Guttermann Fig. 2B merely teaches to total, i.e., sum, what is actually displayed in the deck pane, and whether or not additional orders are in the system, they do not inherently get counted in the totals until displayed in the deck pane. Guttermann does not

⁶ Id.

teach "additional aggregate quotes" and thus does not teach to total the orders in the deck pane with "additional aggregate quotes."

Execution against the aggregate and reserve quotes

The examiner argues that: Guttermann et al. inherently possesses aggregate or reserve prices. However, that statement is nothing more than an unsupported conclusion. It does not follow that inherently Guttermann would need or even desire reserve quotes. Indeed, Guttermann deals with orders, and therefore since Guttermann merely posts orders in the incoming order pane⁷ and inherently does not describe "aggregate quotes ..." or "reserve quotes ..."

Quotes that are displayable and attributable

The examiner mischaracterizes Appellant's argument regarding claim 13.⁸ Specifically the examiner stated: "With regards to appellant's argument that Guttermann does not describe quotes that are displayable and attributable to a specific market participant Examiner disagrees. Guttermann et al. disclose displayable and attributable orders as seen and described in pages 23-26 and Figure 3a."

Appellant acknowledged that Guttermann et al. discloses displayable and attributable orders, "as seen and described in pages 23-26 and Figure 3a." However, what Appellant had argued was that Guttermann did not disclose: "quotes that are displayable and attributable to a specific market participant and additional aggregate quotes that are displayable but not attributable to a specific market participant," as called for in claim 2. Specifically the feature of aggregate quotes that are displayable, but not attributable, and thus the combination of that feature with quotes that are displayable and attributable is neither described nor suggested by any reasonable construction of Guttermann.

⁷ Guttermann Col. 10.; Col. 11, lines 24-26.

⁸ As described above, Guttermann does not describe quotes that are displayable and attributable to a specific market participant and additional aggregate quotes that are displayable but not attributable to a specific market participant. Instead, in Guttermann, Guttermann only discusses orders and all of those orders are displayed and the displayed orders include the firm or house that submitted the order. Hence Guttermann does not teach displayable, non-attributable orders or quotes. Appellant's Appeal Brief page 21.

Montage

Again, the examiner mischaracterized Appellant's argument. Appellant did not argue that: "Guttermann et al. does not describe a montage." Rather, Appellant argued⁹ that Guttermann did not describe the particular montage claimed by Appellant.

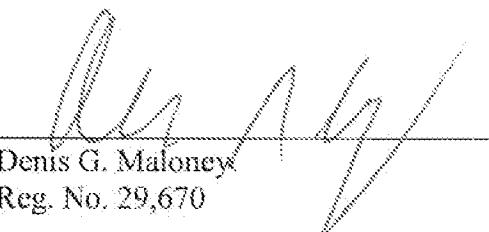
While the examiner can rely on the definition: "A montage is a mixture of miscellaneous elements (as found in Webster's dictionary) and as such . . ." and Guttermann et al. may indeed have "a mixture of miscellaneous elements disclosed.", Appellant contends that Guttermann does not disclose the features of the claim, namely that the aggregated quotes are displayed in a graphical user interface that includes an aggregate montage for displaying aggregate quotes at multiple price levels on either side of the market.

For these reasons, and the reasons stated in the Appeal Brief, Applicant submits that the final rejection should be reversed.

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Respectfully submitted,

Date: 5/24/02


Denis G. Maloney
Reg. No. 29,670

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

⁹ Appellant argued: "...aggregated quotes are "displayed in a graphical user interface that includes an aggregate montage for displaying aggregate quotes at multiple price levels on either side of the market." Guttermann does not describe such a montage." Id.

a matter of law and must be reversed.

(2) Claims 1-23 particularly point out and distinctly claim the subject matter which Appellants regard as their invention within the meaning of 35 U.S.C. 112, second paragraph.

Claim 1 is neither incomplete nor indefinite. Appellant had requested that the examiner re-read the claims since none of the rejections appeared to be based on the current claim set, which is now the claim set on appeal. Claim 1 had previously been amended [Applicant's Reply of Feb. 7, 2003] to recite a method of managing quotes, not "trading securities" as the examiner argues in the final action.

"Additional aggregates" found in line 2 of claim 1 has sufficient antecedent basis, since the feature is presented, in the plural, without the definite article "the." Claim 10 recites the limitation "a reserve quote" not "the reserved" quote in line 2. Claim 12 recites the limitation "additional ... reserve quotes" in line 2. Claim 12 recites the limitation "the order" in line 4 and finds antecedent basis for this limitation in base claim 11.

For claim 13, a server process that aggregates quotes and causes aggregate quotes to be displayed, clearly defines the metes and bounds of the invention. Moreover the claim is definite and supported by Applicant's specification. Claim 14 recites "the electronic market" not system in line 1. The term "can be" is not findable in claim 17, but rather was deleted by Appellant in the Reply dated February 7, 2003. As to claims 18 and 20, those claims are clearly drawn to a "client station" for entering quotes. Claim 21 recites the limitation "the aggregation window," which is supported by base claim 20.

The second paragraph of 35 U.S.C. §112 second paragraph requires that the claims particularly point out and distinctly claim the subject matter that the applicant regards as his invention and is directed to define the legal metes and bounds of the invention. *In re Geofee*, 526 F.2d 1393, 1397, 188 U.S.P.Q. 131, (CCPA, 1975). Appellant's claims are definite since one of ordinary skill in the art would understand the subject matter of these claims and the examiner must use the set of claims as amended in response to the non-final action mailed October 7, 2002,